

HOUSE BILL 926

By Hawk

AN ACT to amend Tennessee Code Annotated, Title 47;  
Title 67 and Title 68, relative to the Tennessee  
responsible cigarette vendor act.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This part shall be known and may be cited as the “Tennessee Responsible Cigarette Vendor Act.”

SECTION 2. It is the intent of the legislature through the provisions of this part:

- (1) To eliminate the sale of cigarettes to underage persons;
- (2) To encourage vendors to be prudent in their selling practices of cigarettes and to restrict or reduce the sanctions that may be imposed in administrative proceedings by the department of agriculture against those vendors who voluntarily comply with responsible practices in accordance with this part; and
- (3) To uniformly apply all provisions in this part statewide, including training, certification and the imposition of penalties or other sanctions for violations of this part, and that no variations from the provisions on training, certification or penalties are permissible.

SECTION 3.

(a) As used in this part, unless the context otherwise requires:

- (1) “Certified clerk” means a clerk who has successfully satisfied the training requirements contained in this part, and who has received certification from a responsible vendor training program;
- (2) “Cigarette” has the same meaning as defined in § 47-31-102;

(3) "Clerk" means any person working in a capacity to sell cigarettes directly to consumers;

(4) "Department" means the department of agriculture;

(5) "Responsible vendor" means a vendor that has received certification from the department pursuant to this part;

(6) "Responsible vendor training program" means a training program related to the responsible sale of cigarettes that has met all the statutory and regulatory requirements set forth in this part, and in department rules and regulations; and

(7) "Vendor" means a person, corporation or other entity that engages in the sale of cigarettes.

SECTION 4. The department shall have the authority to approve all responsible vendor training programs. The department shall establish requirements and guidelines for responsible vendor training programs and vendor and clerk certifications. The department shall establish and keep a master list of certified clerks and clerks not eligible for certification.

#### SECTION 5.

(a) A vendor who seeks certification as a responsible vendor shall provide to the department, pursuant to procedures adopted by the department, evidence of compliance with the requirements of this part. Upon satisfactory proof that the vendor has complied with the requirements, the department shall certify the vendor as a responsible vendor. Certification as a responsible vendor shall be renewed every year. Responsible vendors may have their own training programs certified, or send their employees to any training program certified by the department.

(b) The department shall adopt rules and regulations for monitoring compliance by responsible vendors and for revoking or suspending a responsible vendor's certification for noncompliance with this part.

(c) The department is authorized to monitor and enforce compliance with this part. The department may impose fines on responsible vendors whose training programs fail to satisfy or maintain the requirements of this part or department rules. The department may further impose fines on vendors who hold themselves out as being a responsible vendor when in fact they do not hold that status. The department may also impose fines on responsible vendors who willfully fail to comply with the requirements of this part.

(d) Determination of compliance with the responsible vendor program is the sole province of the department.

SECTION 6. In order to qualify for responsible vendor status, the vendor shall comply with the following requirements:

(1)

(A) Require each and every clerk to successfully complete a responsible vendor training program within sixty-one (61) days of commencing employment, whether the employment is for the first time, after rehiring, or for a different responsible vendor. Responsible vendors shall, prior to employing a clerk, verify with the department that the clerk is eligible for certification;

(B) Each clerk shall successfully complete the responsible vendor training program and after doing so, receive a certificate of completion from the program trainer in a format that is in accordance with rules promulgated by the department. A clerk shall not be authorized to sell cigarettes, unless the clerk has successfully completed the responsible vendor training program and has

received a certificate of completion or is within sixty-one (61) days of the date of hire. The original certificate of completion shall be maintained by the responsible vendor employing the clerk. The responsible vendor shall provide the department with the names and other identifying information, as required by the rules promulgated by the department, of certified clerks within twenty-one (21) days of the date of training; and

(C) Each clerk shall be issued a name badge by the responsible vendor employer. The name badge must have the clerk's first name clearly visible.

Clerks shall wear this name badge at all times during which they are on duty;

(2) Provide instruction for its employees approved by the department, which shall include the following:

(A) Laws regarding the sale of cigarettes;

(B) Methods of recognizing and dealing with underage customers; and

(C) Procedures for refusing to sell cigarettes to underage customers;

(3) Require all certified clerks to attend at least one (1) annual meeting, at which the responsible vendor shall disseminate updated information prescribed by the department and the responsible vendor policies and procedures related thereto. In order for the clerk's certification to remain valid, the clerk must attend an annual meeting each year following such clerk's certification; and the responsible vendor must keep records thereof. Responsible vendors shall notify the department if a certified clerk does not attend an annual meeting as required by this section. The department may, at any time, require responsible vendors to disseminate to certified clerks information from the department that is related to changes in state law or department rules; and

(4) Maintain employment and all responsible vendor training records of all clerks.

SECTION 7. If the department determines that a sale to a minor occurred by a certified clerk, then the certification of the clerk making the sale shall be invalid and the clerk may not reapply for a new certificate for a period of one (1) year from the date of the department's determination. The department shall notify the responsible vendor of their certified clerks who have lost their certification within fifteen (15) days of finding that a sale to a minor occurred.

SECTION 8.

(a) Notwithstanding the provisions of § 67-4-1029, no fine shall be imposed based on a clerk's illegal sale of cigarettes to a minor, if the clerk is properly certified and has attended annual meetings since the original certification, or is within sixty-one (61) days of the date of hire at the time of the violation. However, if the clerk commits a second or subsequent violation of any provision of this section, then such clerk shall be subject to the fines imposed pursuant to § 67-4-1029.

(b) Notwithstanding the provisions of subsection (a), the department shall revoke the certification of a vendor certified as a responsible vendor, if the vendor had knowledge of the violation or should have known about the violation, or participated in or committed the violation. If the department revokes a vendor's certification under this section, the vendor shall be penalized for the violation by the department as if the vendor were not certified as a responsible vendor.

(c) Notwithstanding the provisions of subsection (a) or any other provision of law, the department shall revoke the vendor's status as a certified responsible vendor, if the vendor has two (2) violations within a twelve-month period. The revocation shall be for a period of three (3) years.

SECTION 9.

(a) Each entity submitting and receiving approval for a responsible vendor training program shall pay an annual nonrefundable fee of thirty-five dollars (\$35.00). In addition,

each responsible vendor shall pay an annual fee that is based on the number of certified clerks existing at the time a responsible vendor applies to the department for certification.

The fees shall be as follows:

- (1) 0-15 certified clerks - \$25.00;
- (2) 16-49 certified clerks - \$75.00;
- (3) 50-100 certified clerks - \$150; and
- (4) Over 100 certified clerks - \$250.

(b) The fees shall be deposited by the department in a special agency account to be known as the responsible cigarette vendor certification fund, referred to in this part as the fund.

(c) Any fund balance remaining unexpended at the end of a fiscal year shall be carried forward into the subsequent fiscal year and shall continue to be preserved for the administration of the cigarette vendor certification program.

(d) Interest accruing on investments and deposits of the fund shall be carried forward into the subsequent fiscal year.

(e) Moneys in the fund shall be invested by the state treasurer in accordance with the provisions of § 9-4-603. The fund shall be administered by the department.

(f) Moneys in the fund shall only be expended and obligated in accordance with appropriations made by the general assembly for the purposes as provided in this part.

SECTION 10. This act shall take effect upon becoming a law, the public welfare requiring it.